



Rights and Accountability in Development

Human Rights Violations Under Private Control:

Acacia Mining's Grievance Mechanism and the Denial of Rights

12 June 2019

Executive Summary

Introduction

In late 2017, UK company Acacia Mining Plc, published a new version of a company grievance mechanism it was rolling out at its North Mara gold mine in Tanzania. The grievance mechanism is important as it is meant to deal with scores of serious human rights violations that occurred as a result of Acacia's mining activities in recent years, including killings, life changing injuries and sexual violence. Acacia says its revised grievance mechanism provides redress to victims, fairly compensates them and is compliant with the [United Nations Guiding Principles on Business and Human Rights](#) (UNGPs), the key standard companies are expected to apply. New research by RAID has found the opposite.

Based on in-depth research, RAID has found that Acacia's grievance mechanism subjects those harmed by the company's gold mining operations to a disempowering and often humiliating process. It permits the company to act as investigator, judge and jury on the serious human rights violations by its security agents and/or the Tanzania police working alongside them. It denies victims basic procedural rights, characterises them or their family members as 'criminals,' and entrenches the stark power imbalance between a rich gold mining company and impoverished local residents. Acacia's revised grievance mechanism is failing victims and local residents and is a far cry from being compliant with the UNGPs.

This report provides a detailed analysis of Acacia Mining's [grievance mechanism](#). It is based on in-depth research into the mechanism's implementation and how it operates, including interviews with over 90 victims over a five-year period; Acacia company officials and those of its local operating subsidiary, North Mara Gold Mine Limited; Tanzanian government officials; and Tanzanian civil society organizations; as well as written correspondence with Acacia; participation in company-led consultations regarding the revised grievance mechanism; and direct experience of the mechanism through assistance to individuals and families seeking redress.

RAID’s research provides a rare case study of how those harmed by a company’s operations experience an operational grievance mechanism. The findings starkly demonstrate the concerning expansion of corporate power over local residents and their human rights. Acacia’s grievance mechanism permits the company to define how the human rights of victims should be understood and the manner in which these rights are to be realised or denied. In essence, the company decides what their experience of “justice” will be.

The report is based on an earlier submission to the United Nations Office of the High Commissioner for Human Rights, dated 30 April 2019, in response to its [call for contributions](#) focusing on enhancing the effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuses. This Executive Summary should be read in conjunction with the full report, where supporting information and Acacia’s responses are evidenced in detail.

Background to operational-level grievance mechanisms

In 2011, the United Nations Human Rights Council endorsed the [UN Guiding Principles on Business and Human Rights](#). The UNGPs provide that companies should establish or participate in ‘operational-level grievance mechanisms’ for individuals and communities who may have been negatively affected by a company’s operations. These grievance mechanisms are also known as ‘private’ or ‘company-led’ grievance mechanisms. They are intended to enhance access to remedy for human rights violations or other harm and to prevent abuses from escalating. Since the endorsement of the UNGPs, there has been increasing [interest](#) by companies, international bodies and civil society in grievance mechanisms and how they may support or undermine human rights. Few analyses, however, provide detailed field research on how these company-designed grievance mechanisms operate for individual human rights claimants.

This report seeks to introduce the experience of those who pursue redress for human rights violations through a private grievance mechanism in order to provide important lessons for the use of such mechanisms more generally.

Acacia’s troubled North Mara gold mine

Acacia’s North Mara gold mine is its most profitable mine, having commenced commercial production in 2002. It is located in the remote northern region of Tanzania where [less](#) than 10% of the rural population have completed secondary education, over 30% are illiterate and the primary economic activity is small scale agriculture.

Acacia’s operations in North Mara have long been plagued by troubled community relations. Incidents of violence, with reports of killings, beatings and sexual violence by police and security forces at the mine [date back](#) to at least 2005. RAID and MiningWatch Canada, working with local organisations, [documented](#) at least 22 people killed and 69 injured at or near the mine between 2014 and 2016. Acacia itself [acknowledged](#) 32 ‘trespasser-related’ deaths

“The relationship between the local people and the mine is getting worse. People are still grieving. People have lost jobs and there is no access to gold so the economic situation is worse.”

RAID interview with claimant, North Mara, 14 June 2018.

at its mine during that period. The numbers may be even higher: a 2016 parliamentary inquiry into complaints at North Mara mine received [reports](#) of 65 killings and 270 people injured by police jointly responsible for mine security.

Although Acacia [notes](#) a decrease in ‘security threats,’ since 2016, RAID’s research shows that serious violations continue to be perpetrated by forces providing security at the mine. Acacia itself [reported](#) four possible ‘human rights impacts’ involving the police at the mine in 2018, but has failed to provide further meaningful details.

At the heart of the violence is the Mine’s relationship with the Tanzanian police. Under a written [agreement](#), which Acacia has not made public, the Mine pays and equips the police to provide security and supervise, select and issue assignments to police personnel in coordination with the company. It is agreed that the Mine controls police entry onto its site, and the company has elected to have over 100 police officers stationed there in accommodation it provides.

“The police are all over the area. Police are here because of the mine so the mine can’t say it’s nothing to do with them.”

RAID interview with victim, North Mara, 31 July 2016.

Acacia’s troubles extend beyond human rights concerns. Since 2017, the company has also been [subject](#) to an export ban by the Tanzanian government for alleged unpaid taxes, and in 2018 Tanzanian authorities brought corruption-related charges against Acacia’s subsidiaries, including North Mara Gold Mine Limited (NMGML), and current and former employees. The charges are denied.

The North Mara mine has also been [fined](#) and [threatened](#) with closure for environmental damage.

Acacia’s revised North Mara grievance process

Acacia’s first implemented a grievance mechanism at the North Mara mine around 2014. The mechanism was deeply flawed and was subject to intense criticism by RAID and other civil society groups. As a result of the critiques, Acacia set out to reform it. The revised version, termed the ‘Community Grievance Process,’ was [published](#) on Acacia’s website in late 2017.

On paper, Acacia’s grievance process [permits](#) claims by community members, groups or civil society organisations concerning ‘adverse impacts’ by the ‘Mine’ (which is not defined but is taken to mean NMGML and/or Acacia) or third parties linked to it on particular ‘interests or rights.’ These adverse impacts are specified to include: human rights, the environment, enjoyment of land or other property, housing and livelihoods, or health and safety.

Grievances are to be resolved through two steps: (1) identify if an ‘adverse impact’ involving the Mine or a linked third party has occurred; (2) if yes, identify a remedy. Each step in turn contemplates two stages. The first stage involves a meeting between the Mine and the person or persons making the complaint, termed in the process as a ‘grievant’, in order to agree if there has been an adverse impact or remedy. If the meeting between the parties does not result in agreement, the second stage permits the grievant to request an appeal hearing by the Grievance Committee. This committee is comprised of three members chosen by the Mine from rosters. The individuals listed on the rosters are directly or indirectly appointed by the Mine.

The Mine thus controls not simply the design of the grievance process, but also its implementation and the outcome of all grievances. The result of this near total control of the grievance process is evident from the company's own published materials: by Acacia's own count, the Mine has accepted a 'security-related' human rights impact in only 30 (or 18%) of the 163 grievances concluded. Moreover, when Acacia reports that a negative impact was 'accepted' it tells only part of the story and says nothing about whether those who brought the complaint received fair or adequate compensation. Many interviewed by RAID said that they had not.

The Mine's absolute control over the grievance process means it can, and frequently does, disregard its own published procedure, generally to the prejudice of grievants. Acacia's public-facing documents purporting to govern the process thus offer only a partial, and often inaccurate, picture of how it actually operates in practice.

The design and implementation of the grievance process, and the ways in which it is failing those seeking redress, are analysed in detail in the full report. Here, focus is placed on how the grievance process does more than just subject individual claimants to an unfair and wholly one-sided process. It represents a troubling expansion of corporate power by: (i) permitting violations to continue rather than preventing them; (ii) substituting company 'adjudication' for justice; (iii) defining how human rights are experienced; (iv) erecting barriers to remedy; (v) extending authority over local community members through their disempowerment; and, (vi) misrepresenting human rights harms by extending control over information.

(i) Permitting violations to continue rather than preventing them

Central to the UNGPs' endorsement of operational-level grievance mechanisms is the idea that such mechanisms enable companies not simply to redress human rights harms, but to take corrective measures to prevent them from continuing. Acacia's grievance process purports to [reflect](#) this aim. Yet it is clear that Acacia's use of the grievance process has primarily served the purpose, not of preventing or mitigating adverse impacts, but of providing a cover for them to continue.

Acacia's grievance process has already received close to 200 security-related grievances. It is clear from these grievances, and information published by RAID, other NGOs, and Acacia itself that the company's relationship with the Tanzanian police is central to many of these grievances, particularly those involving the most serious harms. The large number of grievances involving the use of force by police should have alarmed Acacia's management. Senior managers should have initiated a comprehensive and transparent review into whether the company should continue to use the Tanzanian police for its security operations, why no police officers were being held to account for the widespread killings and serious injuries occurring at the Mine, and if the company could continue to conduct businesses responsibly in light of these serious violations. Despite the clear evidence of ongoing and serious human rights abuses over many years by the Tanzanian police operating at the Mine, Acacia has maintained its close relationship with the police, [claiming](#) it could not operate at North Mara 'without the assistance provided by the Tanzanian Police'

because ‘it would not be able effectively to respond to the scale and frequency of criminal activity directed towards the Mine, NMGML’s employees and property.’

The UNGPs are clear that the function of grievance mechanisms is to prevent ‘harms from compounding and grievances from escalating.’ If Acacia took seriously its claim that its grievance process was intended to help prevent or mitigate adverse impacts, it would have ceased its relationship with the Tanzanian police.

The grievance process helps Acacia continue to contract for that security assistance, on terms shown to enhance the likelihood of serious human rights violations, by purporting to offer the possibility of redress for those violations *ex post facto*. In that sense, redress represents simply a ‘cost of doing business.’ Even if the process was fair, some losses cannot be redressed in any meaningful sense given the nature of many of the harms, which include killing and life-changing injuries.

“I’ll never forget that night. It has affected me psychologically. I only thought animals were shot like that. It has taken a toll on me because my friend was shot.”

RAID interview with witness, North Mara, 27 July 2016.

Box: Police violence, fear and impunity

Tanzanian police stationed at the mine have been responsible for:

- *Shootings, causing death and severe injuries*
- *Leaving people to bleed to death from gunshot wounds*
- *Severe beatings, resulting in broken bones and life-changing injuries, including paralysis*
- *Throwing rocks down on people, killing at least one man in this manner*
- *Firing ‘non-lethal’ rounds and teargas at close range, causing serious wounds*

Widespread fear of the arbitrary nature and abuse of police power is a key factor in fostering impunity. Victims reported to RAID not daring to seek medical help after an incident for fear of police reprisals including arrest for ‘trespassing’ or ‘theft.’ Friends and family of one man shot by police at the mine never completed a form that would have entitled him to medical care because they were fearful of naming the police as perpetrators. The man later died. RAID has also documented instances where the police tried to conceal their involvement in the violence: intimidating hospital staff to falsify the nature of injuries or the circumstances in which a death occurred; trying to prevent post-mortems being held at all or intimidating families to hand over the body of a relative for a post-mortem carried out under the control of the police, without providing the family with the results; recording the cause of death or injury as ‘a sharp object,’ which is a euphemism for a bullet.

RAID is not aware that a single police officer guarding the mine has ever been charged, let alone convicted, of a crime associated with the excessive use of force. Acacia appears to have uncritically [accepted](#) the determination by the Attorney General’s Office that the use of force had been justified in most cases.

(ii) Substitution of company ‘adjudication’ for justice

Operational-level grievance mechanisms are meant to complement, not replace, state-based mechanisms. They should not represent the sole or primary means by which those whose human rights have been violated may seek remedy, let alone justice. Acacia’s grievance process shows how they may nevertheless serve that role.

Acacia has designed its grievance process in the image of state-based mechanisms. The process is adversarial. Even the initial ‘engagement and dialogue’ stage is based on the Mine’s determination as to whether a human rights ‘impact’ occurred, including whether excessive force was used. If, as is usually the case, the Mine concludes no such impact occurred, grievants must argue against that conclusion. If the Mine refuses to change its position, the matter proceeds to a hearing before a Grievance Committee, at which grievants must substantiate their claims through evidence and submissions, which are opposed by the Mine’s representatives. The Grievance Committee, which is ultimately controlled by the Mine, issues decisions that effectively read as judgments.

“I think that the process wasn’t fair at all....There was no justice at all.”

RAID interview with claimant, North Mara, 4 December 2018.

In this way, the appearance of a state-based mechanism is given; yet in fact it is one that is wholly controlled by the company. Both the initial determination by the Mine of a violation and the ‘judgment’ by the Grievance Committee are contrary to the UNGPs explicit direction that adjudication occur through independent third parties.

Acacia’s employment of the Tanzanian police further positions it in the place of the state insofar as ‘adjudicating’ human rights claims against it and/or the police, undermining local people’s faith in institutions supposedly constituted and mandated to protect them. The police are the perpetrators of, or otherwise complicit in, the violations. The police’s independence, perceived and real, is undermined since the Mine provides their funding and other benefits. And as the employer of the police, the Mine is seen to – and in important respects does – have authority over police personnel, and becomes the place to which to turn for reparations.

Acacia also increases the likelihood that claims are channeled through its grievance process by [precluding](#) people from pursuing parallel claims for the same violations in other, including state-based, forums.

It is no answer for Acacia to say that claims may be pursued elsewhere having exhausted its grievance process. Acacia controls how onerous the process is for grievants and can exhaust their capacity and resources to bring claims in other forums. Claims subject to short limitation periods may also be precluded in state-based mechanisms by the time grievances are completed. Nor is it an answer to blame weak state institutions for failing to provide a

“They said I could take my complaint elsewhere if I was not happy and there were lots of other places I could go. They did not say where I could go and I did not know where else I could go so I accepted.”

RAID interview with claimant, North Mara, 14 June 2018.

viable avenue for justice when Acacia’s own conduct, including through the employment of the police, actively works against them.

(iii) Defining how human rights are experienced

Having positioned its grievance process as the primary forum for human rights claims, Acacia has empowered itself to define how human rights are realised by or, more commonly, denied to those bringing claims. Acacia [claims](#) its grievance process adheres to the UNGPs, and it [acknowledges](#) that people are entitled to the full range of human rights recognised by international instruments such as the International Covenant on Economic, Social and Cultural Rights and the African Charter on Human and Peoples’ Rights.

Yet contrary to these instruments, Acacia’s grievance process explicitly differentiates human rights from harms to people’s rights in the environment, land or other property, housing and livelihood, and health and safety. Instead, it delimits human rights to those categorised as ‘security-related,’ and then [confines](#) their realisation to three ‘subject areas’: use of force and firearms; arrest, apprehension and detention; and sexual violence. In this way, the majority of human rights, especially those guaranteed for vulnerable groups, are minimised or denied through the process; grievants face enhanced evidential burdens to establish human rights impacts, such as proving that police did not follow proper procedure, that are inconsistent with international law and standards; and grievants are treated firstly as security threats, rather than rights holders.

(iv) Erecting barriers to remedy

The UNGPs endorse operational-level grievance mechanisms as a means by which to enhance access to remedy for human rights violations. Acacia’s grievance process, however, does the reverse: it erects barriers to remedy for such violations.

The Grievance Process is complicated and highly legalistic. Navigating it requires understanding of [scores of provisions](#) setting out rules regarding how evidence is presented, timeframes for specific steps, the conduct of meetings, the preparation of minutes and the use of experts.

“No one from the Mine explained what the steps in the process were, or what evidence I needed to provide.”

RAID interview with claimant, North Mara, 4 December 2018.

Simply to initiate a grievance, grievants, many of whom cannot read or write, must complete a 10-page [intake form](#) requiring significant details including identifying who was responsible for the harm, the rights that were affected through referencing legal standards, documentary evidence and the identity of possible witnesses.

Once grievances are initiated, grievants enter an adversarial process wholly controlled by the Mine. Throughout, the Mine, which generally possesses crucial evidence, such as CCTV footage, internal reports, and evidence from the police, is only required to disclose evidence on which it relies to support its position. It is not obliged to disclose incriminating evidence of its own and/or police wrongdoing or justifying a high remedy.

“I asked if I should have a lawyer and they said I didn’t need to bring my own since the Mine already had lawyers....I think it would have been better if I had gone with a lawyer of my own.”

RAID interview with claimant, North Mara, 14 June 2018.

The Mine’s representatives have training and expertise, as well as recourse to Acacia’s General Counsel, who under company [policy](#) receives witness statements and directs investigations into incidents involving serious injuries, and any other legal expertise the company chooses to engage. Yet Acacia [says](#) that grievants do not require a lawyer. The company does offer a voucher covering four hours of legal advice, though, in most cases, four hours is inadequate even to complete the

intake form. Even so, grievants are rarely informed of their right to the voucher. When they are told, they are left on their own to find a lawyer, a challenging task since they can often only be found in cities over four hours travel from the mine and the vouchers do not cover travel costs.

(v) Extending authority over local community members through their disempowerment

The UNGPs recognise that ‘[p]oorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.’ With Acacia’s grievance process, this effect is stark. Those whose rights have been violated are required to seek redress from the company they identify as responsible. Upon submission of their grievance, they enter a process wholly controlled by that company, while the harm they have suffered – as serious as the killing of a family member or a life-changing injury – is [downplayed](#) as an ‘adverse impact.’

“I am not happy. I think it was unfair. Others have decided for me and there was no person to advocate for me....All the work was done by the mine and I don’t know what type of ulterior motives they had.”

RAID interview with claimant, North Mara, 14 June 2018.

Disempowerment is further assured by the complex and legalistic process. Grievants consistently expressed to RAID they did not understand it, a concern arbitrarily disregarded by the Mine. Grievants often must accept help from the Mine to file their grievance, because they do not have or understand the specifics required, and/or cannot read or write. Many are forced to make repeated requests of the Mine simply to know whether their grievances will progress, often being told only that the Mine will contact them when ready.

Grievants are also reliant on the Mine for evidence, as most is under direct or indirect company control. Even when they bring their own evidence, the Mine insists that it be in a form or manner acceptable to the Mine. Grievants have told RAID that the company has asked for, then not returned, medical records and other forms, and has even instructed doctors not to share the results of examinations, arranged by the company, with the grievant.

“They make people go back and forth with documents and this is exhausting....Most victims do not know how to read or write English or even Swahili.”

RAID interview with claimant, North Mara, 14 June 2018.

Grievants must appear at meetings and hearings without the opportunity to adequately prepare, as the Mine often does not disclose evidence or even notify grievants of hearings until just before they occur.

Throughout, grievants face [trained and experienced](#) Mine representatives in an adversarial process that privileges knowledge and understanding of domestic and international law, standards and codes of conduct. In most cases, grievants have no knowledge or access to such materials. And they must do so in a context that seeks to focus attention on their and/or their family members' 'criminality.' There have even been instances when bystanders outside the mine have been injured in cross-fire from security operations, but then apprehended as 'trespassers', whilst others have been killed.

For the few whose claims are 'substantiated,' they are often left in the dark as to the reasoning behind their compensation and may find it severely inadequate, effectively devaluing their loss. And all must bear the costs of participating, even if, as it sometimes does, this means borrowing money.

“The Mine said that they could only offer [redacted amount] to me and the committee said they could not help me get any more. There was no reason given....I have now received the money and I signed a document, but I don't have a copy of that. I have been promised it but it has still not arrived.”

RAID interview with claimant, North Mara, 14 June 2018.

(vi) *Misrepresenting human rights harms by extending control over information*

The grievance process enables Acacia to present a misleading image as to the human costs of its operations in North Mara in at least two ways. First, by restricting human rights claims to those that are 'security-related,' Acacia downplays the harm caused, [categorising](#) other claims, many of which implicate human rights, as environmental or concerning land and property, or 'other.' Moreover, differential impacts on vulnerable groups goes unreported.

Second, the Grievance Process forms part of a larger system by which Acacia and NMGML control information. That system includes a [Mine Investigation Policy](#) that includes provisions on 'confidential informant management' and provides, for serious injuries and deaths, '[a]ll information is to be marked "Legal and Confidential and subject to legal privilege",' and that no other person than the company's general counsel is to receive copies of witness statements or commissioned investigation statements. The Grievance Process complements this policy by ensuring that claims concerning such incidents remain in a confidential, company-controlled process. To participate, those whose human rights have been violated, and civil society organisations assisting them, must agree to keep proceedings and evidence 'strictly confidential.' Importantly, that same confidentiality does not bind the Mine, which is expressly permitted, amongst other things, to publish anonymised or summarised reports regarding the process. Those whose rights have been violated and those who assist them are thus effectively muzzled through the process, while Acacia may publish information of its choosing. And to the extent that Acacia

does publish such information through its annual reports, it is minimal, highly generalised and appears largely self-serving.

Conclusion

Acacia's Grievance Process is not compliant with the UNGPs. In fact, the process itself arguably violates human rights. RAID's research on Acacia's process shows how, unless carefully circumscribed, grievance mechanisms offer companies the possibility of investigating and sitting in judgment on human rights violations resulting from their operations, including defining how human rights are realised, or more often denied.

This report thus cautions against the use of private grievance mechanisms beyond the limited contexts in which they genuinely serve the purposes of preventing or mitigating harms and complement rather than operate in place of state-based processes. Drawing on the lessons learned from Acacia's grievance process, RAID concludes that company led grievance mechanisms are fundamentally unsuitable for systematic or grave human rights violations. Otherwise, such mechanisms could represent another step towards a corporate takeover of human rights.

RAID has publicly called upon Acacia to:

- Urgently reconsider the Mine's relationship with the Tanzanian police, who have been involved in many of the most serious human rights violations at North Mara. The violations and accompanying impunity have continued for nearly a decade and has long since reached a point where it should be ringing alarm bells for senior management and Acacia's Board.

Without meaningful controls to prevent police abuses at the North Mara mine, Acacia must consider whether it can continue to use the police for joint security operations. RAID has urged Acacia's Board to review the use of the police for security operations at North Mara.

- Suspend the existing grievance mechanism pending an independent review of the grievance process by a respected, internationally recognised third party, such as the UN Working Group on business and human rights, with a view to incorporating the repeated critiques made by victims, Tanzanian and international civil society. An internal review by company officials, or their advisers, responsible for the current mechanism will lack credibility and is unlikely to bring about the required changes. In the interim, RAID has urged Acacia to cooperate with local Tanzanian authorities to ensure accountability and to continue to take precautionary measures and provide humanitarian assistance.

Recommendations from the report

This section sets out recommendations for the use of private grievance mechanisms. They are drawn from analysis of Acacia's North Mara grievance process in design and practice, but have relevance for all private grievance mechanisms that seek to address human rights claims.

- a. OGMs are unsuitable for the consideration of systematic or grave human rights violations** – Private grievance mechanisms are not appropriate for the consideration of human rights violations that are part of a pattern of excessive use of force. Such violations require independent oversight from a neutral body of sufficient expertise, with investigative, adjudicative and enforcement powers. Violations that encompass killings, sexual violence, torture and cruel, inhuman and degrading treatment are crimes.
- b. Need for supranational oversight** – If necessary, and in order to ensure independent adjudication in the case of systematic and grave human rights violations, for example, where state security or police forces regularly use excessive force that results in deaths or serious injury, and where there is a culture of impunity, such a body could be constituted at the international or regional level.
- c. Legally binding obligations are necessary** – Companies are able to abide by the UNGPs or not as they choose. Companies benefit from positive associations by professing adherence to the UNGPs often without concern as to whether they are effective enforcement mechanisms which respect human rights. Legally binding obligations upon companies are necessary at both the domestic and international level. This is particularly evident in matters of redress for human rights violations where those harmed by irresponsible practices need yet are so often deprived of appropriate remedy,
- d. Companies should avoid the use of state security forces on an ongoing basis** – Companies should not rely upon state security forces and/or the police to provide security services for their operations on a regular and ongoing basis. Memorandums of understanding and other forms of contractual arrangements that regularise these relationships should not be used purely as a tool to manage and limit legal and other risks to the company.
- e. Companies should cease doing business in contexts of impunity** – When a company cannot operate without recourse to state security forces in order to carry out its day-to-day business, and when such forces are responsible for systematic and grave human rights violations with impunity, then it should cease to do business until effective reforms to stop such abuse are implemented.
- f. State-based processes should not be undermined** – Private grievance mechanisms should complement, not replace state-based processes. Where state security forces are contracted to provide security on an ongoing basis, state actors lose their independence and local people are likely to lose faith in them. When the interests of state actors and the company become ever more closely aligned, recourse to justice or other state-based redress is undermined.

The following recommendations should **only** apply when private grievance mechanisms are used, in accordance with principle 29 of the UNGPs, to prevent problems from escalating into serious human rights violations (and not to deal with serious human rights violations themselves). In such circumstances, companies which use grievance mechanisms should do the following:

- g. Engage in a genuine community-level process** – Company control of grievance mechanisms, whether exercised directly or through the power of appointments and management over the administrative process, is wholly inconsistent with principles of procedural fairness, and is contrary to the clear direction of the UNGPs.
- h. Ensure simple and clear rules of procedure** – Claimants must be able to understand the process and what is required of them at each step of the process. It is not sufficient to provide simplified written guides if they do not represent the actual process that is being implemented. Claims and chances for redress are prejudiced by unduly complicated and legalistic procedures.
- i. Ensure that power imbalances are appropriately addressed** – Those seeking redress for human rights violations should not be disadvantaged by a relative lack of access to assistance necessary to navigate a process intended to ensure that they receive just redress. Without assurances that they will be adequately assisted, including through legal representation where appropriate, private grievance mechanisms will be disempowering, reinforcing problematic dynamics of corporate power.
- j. Provide for independent and adequate investigations** – Impartial investigations into incidents are essential to ensure adequate redress for human rights violations, accountability for wrongdoers and better practices. To these ends, investigations should be independent, free from company control and interference, and should complement rather than impede or improperly influence parallel investigations by public authorities. They should guarantee preservation of and access to any relevant information, including information that may be detrimental to the company’s case, and ensure its full disclosure to claimants.
- k. Require independent adjudication** – When a problem cannot be agreed and remedied through dialogue, in accordance with principle 31 of the UNGPs, a business enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine the outcome. Adjudication should be provided by a legitimate, independent third-party mechanism.
- l. Not hinder or block redress in other forums** – Given that the main purpose of private grievance mechanisms is to provide agreed remedy through dialogue to prevent problems from escalating, it is difficult to see how preventing those whose human rights have been violated from also pursuing their claims in other forums is antithetical to this. Proceedings under private mechanisms are generally conducted on a ‘without prejudice’ basis, but can be prejudicial to the interest of those seeking redress if they are forced to choose one avenue of redress over others, especially when limitations periods may close-off other routes.

- m. Provide full transparency for claimants and the process** – Grievance mechanisms that prevent claimants from accessing relevant evidence or materials, including those that define relationships between companies and associated parties such as state police, cannot ensure that their claims will receive fair determination. More generally, a lack of transparency regarding the process, its performance, treatment of individual claimants and resolution of claims precludes oversight and is vulnerable to abuse, while affording the opportunity for misleading public representations.
- n. Be open to scrutiny beyond ‘self-reporting’** – Where concerns are raised about the use of private grievance mechanisms by those who have suffered human rights violations and civil society, the UN Working Group on Business and Human Rights or an independent expert or Special Rapporteur from a relevant thematic mechanism should undertake a review of their functioning.